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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 JASON KINSFATHER,

12 Plaintiff,

13 v.

14 PIERCE COUNTY et al.,

15 Defendants.

No. 09-5129RBL/JRC

REPORT AND RECOMMENDATION

NOTED FOR:
December 11, 2009

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17 This 42 U.S.C. §1983 Civil Rights matter has been referred to the undersigned Magistrate
18 Judge pursuant to 28 U.S.C. §§ 636(b)(1)(A) and 636(b)(1)(B) and Local Magistrate Judges'
19 Rules MJR 1, MJR 3, and MJR 4.

20 On August 19, 2009, this court entered an order that the United States Marshal's Service
21 attempt to serve the only remaining defendant, Steven Thomas Morales, by mail at an updated
22 address provided by plaintiff (Dkt # 27). This was the second attempt to serve this defendant.
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24 On September 16, 2009, the service was returned unexecuted with a notation that the
25 defendant does not live at that address (Dkt. # 30). It has been over 250 days since this action
26 was commenced on March 10, 2009 and the defendant has not been served.

REPORT AND RECOMMENDATION- 1

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Failure to serve.

Federal Rule of Civil Procedure 4 (m) indicates that if service of a summons and complaint is not made within 120 days of filing the court shall dismiss without prejudice unless the plaintiff can show good cause why service was not made within that time. Ignorance of the rules is not good cause. Townsel v. County of Contra Costa, 820 F.2d 319, 320 (9th Cir.1987). The above analysis and a plain reading of the rule would appear to indicate that dismissal without prejudice is in order, but the standard of review is abuse of discretion, which indicates that the Court has discretion in deciding if dismissal is proper. Wei v. State of Hawaii, 763 F.2d 370, 371 (9th Cir. 1985).

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There is nothing in the record to indicate defendant Morales is aware of this action. It appears he no longer works for the jail and has moved. Accordingly, the court recommends that this action be **DISMISSED WITHOUT PREJUDICE**.

CONCLUSION

This court recommends that the action be DISMISSED WITHOUT PREJUDICE for failure to serve a defendant. Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have ten (10) days from service of this Report to file written objections. *See also*, Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is directed to set the matter for consideration on **December 11, 2009**, as noted in the caption.

DATED this 10th day of November, 2009.

J. R. Handwritten

J. Richard Creatura
United States Magistrate Judge